THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 1361 of 2006

Oral order:

The petitioner and respondent No.5, are employees of respondent No. 4-APCPDCL. They are on deputation to Municipal Corporation of Hyderabad. The petitioner is presently working as Divisional Engineer (Electrical), while respondent No.5 is working as Assistant Divisional Engineer (Electrical) in Municipal Corporation of Hyderabad. It appears that one Sri. T. Jagath Reddy, who was also on deputation along with the petitioner to Municipal Corporation of Hyderabad, was working as Executive Engineer (Electrical). When respondent No.3-Chief Engineer, Municipal Corporation of Hyderabad, issued proceedings dated 26.07.2005 informing the petitioner that there is only one post of Executive Engineer, which is equivalent to Divisional Engineer (Electrical), and it is not possible to continue him in the post of Divisional Engineer (Electrical) as it was already held by Sri. T. Jagath Reddy, he filed writ petition in W.P. No.19821 of 2005, and this Court by order dated 08.09.2005, disposed of the same holding that it is impermissible for the respondents to continue the petitioner in a superior post when his deputation was to an inferior post. While refusing to give any positive direction to respondent No.3-Chief Engineer, Municipal Corporation of Hyderabad, to continue the petitioner in the post of Divisional Engineer (Electrical), on the request made by the counsel, granted liberty to the petitioner to make representation to the respondents, and till the said representation is disposed of by the respondents, directed continuance of the petitioner on the same terms and conditions as obtaining on that day.

While so, Sri. T. Jagath Reddy, who was holding the post of Executive Engineer (Electrical), made representation dated 28.11.2005 seeking his repatriation to his parent Department, namely respondent No.4-APCPDCL. The petitioner made representation dated 29.11.2005 to respondent No.2-Commissioner, Municipal corporation of Hyderabad, to accommodate him in the post of Executive Engineer (Electrical), which is going to fall vacant consequent upon the repatriation of Sri. T. Jagath Reddy to his parent Department. Respondent No.3, Chief Engineer,

Municipal Corporation of Hyderabad, vide his order dated 14.12.2005, while relieving Sri. T. Jagath Reddy from the post of Executive Engineer (Electrical), gave full additional charge of the post of Executive Engineer (Electrical) to the petitioner, and directed him to take over complete charge of the post of Executive Engineer (Electrical) from Sri. T. Jagath Reddy. On the strength of the said order, while the petitioner was holding additional charge of the post of Executive Engineer (Electrical), respondent No.1-Government of Andhra Pradesh, issued orders in G.O. Rt. No. 62, Municipal Administration and Urban Development (F1) Department, dated 19.01.2006, posting respondent No.5 as Executive Engineer (Electrical) duly relieving the petitioner from the said post. Impugning this G.O., issued by respondent No.1-Government of Andhra Pradesh, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner, the learned Government Pleader for Municipal Administration for respondent No.1-Government of Andhra Pradesh, the learned Standing Counsel for respondent Nos. 2 and 3-Commissioner and Chief Engineer, Municipal Corporation of Hyderabad, the learned Standing Counsel for respondent No.4-APCPDCL and the learned counsel for respondent No.5.

The learned counsel for the petitioner submitted that the petitioner is a meritorious candidate, and this is evident from the various certificates issued by the respondents, and as such, he stands a better chance to hold the post of Electrical Engineer (Electrical) when compared with respondent No.5. He submitted that under the A.P. Public Health and Municipal Engineering Service Rules and the Executive Instructions, governing the deputation, the power of posting a particular officer to a particular post or relieving a particular officer from a particular post or promoting an officer from one category to another, is exclusively vested in respondent Nos. 2 & 3 and 4, and as such, respondent No.1-Government of Andhra Pradesh, could not have issued the impugned G.O., posting respondent No.5 to the post of Electrical Engineer (Electrical) duly relieving the petitioner from the said post, and as such, the impugned G.O. issued by respondent No.1-Government of Andhra Pradesh, is without jurisdiction, illegal and arbitrary.

The learned Government Pleader appearing on behalf of respondent No.1-Government of Andhra Pradesh submitted that respondent Nos. 2 and 3-Commissioner and Chief Engineer, Municipal Corporation of Hyderabad, cannot usurp the power of respondent No.1-Government of Andhra Pradesh, to appoint, dismiss and transfer and take disciplinary action against the officers, which is

conferred upon them by the statute. He submitted that under Section 130 of the Hyderabad Municipal Corporations Act, 1955, the Government of Andhra Pradesh alone have the power to appoint, dismiss and transfer and to take disciplinary action against officers who hold the posts specified in Schedule “C”, and in exercise of such power, the Government of Andhra Pradesh, have issued the impugned G.O. posting respondent No.5 to the post of Executive Engineer (Electrical) duly relieving the petitioner from the said post, and therefore, no exception can be taken thereto. The learned Standing Counsel for respondent Nos. 2 and 3 and 4, fairly admitted that such power, in fact, is vested in respondent No.1. The learned counsel for respondent No.5 submitted that the petitioner is junior to respondent No.5, and it is not permissible to continue the petitioner, who is junior to respondent No.5 in the post of Executive Engineer (Electrical). He submitted that even respondent No.5 is a meritorious candidate and he has also been awarded various certificates, and he being senior to the petitioner and merit vis-à-vis, the petitioner and respondent No.5 being equal, no exception can be taken to the impugned G.O. issued by respondent No.1-Government of Andhra Pradesh, posting respondent No.5 as Executive Engineer (Electrical) duly relieving the petitioner from the said post.

Having heard the respective counsel, I have gone through the relevant file relating to the issuance of the impugned G.O. by the Government, which was produced by the respondents before the Court.

No officer or employee, can seek to continue in the Department, to which he had come on deputation from other Department, as a matter of right. Normally the period of deputation is fixed, and the lien of the officer for such period is protected in the parent Department. The parent Department can recall its employee who is on deputation if his services are required, and likewise, the Department to which the employee is on deputation can repatriate the employee if it feels that his services are no more required. However, continuance of the officer or employee beyond the period of deputation, depends on the needs, requirements and suitability of the officer to hold the post in the Department to which he had come on deputation.

Though there is dire need for recruiting staff on permanent basis to the posts in the Municipal Corporation of Hyderabad, it is unfortunate to note that the Government is not sanctioning permanent posts, but is permitting the Municipal Corporation of Hyderabad to fill the posts on deputation. That is why, the Municipal

Corporation of Hyderabad, is taking officers for their requirement from other Departments on deputation, for its functioning.

The petitioner, who is Assistant Divisional Engineer in respondent No.4-APCPDCL, has admittedly come on deputation to Municipal Corporation of Hyderabad as Deputy Executive Engineer. There is only one post of Executive Engineer (Electrical) in Municipal Corporation of Hyderabad, which was hitherto held by Sri. T. Jagath Reddy, who was also on deputation to Municipal corporation of Hyderabad. As the petitioner was given promotion, and there being only one post of Executive Engineer, which was held by
Sri. T. Jagath Reddy, respondent No.2, Commissioner, Municipal Corporation of Hyderabad, vide letter dated 26.07.2005 informed the petitioner that he cannot be continued with them. Assailing the said order, the petitioner filed writ petition in W.P. No. 19821 of 2005, which by order dated 08.09.2005 was disposed of by this Court, *inter alia* observing as follows:

> Had the deputation of the petitioner been cut short before expiry of one year, this Court certainly would have interfered with in the matter and ensured that the deputation is continued till the stipulated period. It is a matter of record that the petitioner earned promotion to a higher post. It is impermissible for the respondents to continue the petitioner in a superior post i.e. Divisional Engineer, which his deputation was to an inferior post of Deputy Executive Engineer (Electrical). In effect, the petitioner has to choose between his promotion or place of working. If he is particular about promotion, he has to leave the working place, and if he is interested to continue in the place of deputation, he has to forego his promotion. He cannot have it both ways.

While refusing to give positive direction, on the request of the counsel for the petitioner, this Court permitted the petitioner to make representation. After the disposal of the writ petition,
Sri. T. Jagath Reddy, who was holding the post of Executive Engineer (Electrical), was promoted, and he sought repatriation to his parent Department, namely respondent No.4-APCPDCL. Respondent No.3-Chief Engineer, Municipal Corporation of Hyderabad, while repatriating Sri. T. Jagath Reddy to respondent No.4-APCPDCL, vide order dated 14.12.2005, kept the petitioner in full additional charge of the post of Executive Engineer (Electrical). The counter filed on behalf of respondent Nos. 2 and 3-Commissioner and Chief Engineer, Municipal Corporation of Hyderabad, shows that the petitioner was given full additional charge of the post of Executive Engineer (Electrical) as a working arrangement, and except this, there is no other reason assigned or shown, justifying giving of full additional charge of Executive Engineer (Electrical) to the petitioner. However, respondent No.2-Commissioner, Municipal Corporation of Hyderabad, without assigning any reason,

vide proceedings dated 19.01.2006, posted the petitioner as Executive Engineer (Electrical). On the very same day, respondent No.1-Government of Andhra Pradesh, issued the impugned G.O. posting the petitioner as Executive Engineer (Electrical) duly relieving the petitioner from the said order. The order of respondent No.2-Commissioner, Municipal Corporation of Hyderabad, is heading into direct conflict with the G.O. issued by respondent No.1-Government of Andhra Pradesh. Therefore, which of the two orders – whether the order issued by respondent No.1-Government of Andhra Pradesh or the order issued by respondent No.2-Commissioner, Municipal Corporation of Hyderabad, have to be sustained, has to be decided. Though the petitioner contends that it is only respondent No.2-Commissioner, Municipal Corporation of Hyderabad, or respondent No.4-APCPDCL, who have power to post him at a particular place, the fact remains, under Section 130 of the Hyderabad Municipal Corporations Act, 1955, the Government of Andhra Pradesh, is invested with the power to appoint, dismiss and transfer and to take disciplinary action against officers who hold the posts specified in Schedule "C", which *inter alia* include the posts of Executive Engineers and Deputy Executive Engineers. Since the post of Executive Engineer, is one of the post mentioned in Schedule "C" to Section 130 of the Hyderabad Municipal Corporations Act, in respect of which, the Government of Andhra Pradesh have the power to appoint, dismiss and transfer and take disciplinary action against the officer who hold the posts, it cannot be said that respondent No. 1-Government of Andhra Pradesh, have no power to issue the impugned G.O. posting respondent No.5 as Executive Engineer (Electrical) duly relieving the petitioner from the said post. The counter filed by respondent No.3-Chief Engineer, Municipal Corporation of Hyderabad, on behalf of himself and respondent No.2-Commissioner, Municipal Corporation of Hyderabad, rather than supporting the order dated 19.01.2006 of respondent No.2-Commissioner, Municipal Corporation of Hyderabad, posting the petitioner as Executive Engineer (Electrical), supports the impugned G.O. issued by respondent No.1-Government of Andhra Pradesh, which *inter alia* states that the staff pattern of Electrical Section in MCH was approved by the Government and the posts are drafted from APCPDCL on deputation basis, and as such, the petitioner cannot be allowed to contend that respondent No.1-Government of Andhra Pradesh have no authority or *locus standi* to issue impugned G.O. posting respondent No.5 as Executive Engineer (Electrical) duly relieving the petitioner from the said post. Though respondent No.2-Government of Andhra Pradesh, have power to post an

officer to the post of Executive Engineer, the fact remains, no reason whatsoever has been assigned by respondent No.2-Commissioner, Municipal Corporation of Hyderabad, in posting respondent No.5 as Executive Engineer (Electrical), except stating that they have carefully examined the matter.

In the above view of the matter, both the impugned G.O. issued by respondent No.1-Government of Andhra Pradesh as well as the orders dated 19.01.2006 issued by respondent No. 2-Commissioner, Municipal Corporation of Hyderabad, which run into direct conflict with each other are set aside. However, having regard to the facts situation, as narrated above, I deem it appropriate to dispose of the writ petition with the following directions:

Having regard to the rival claims of the petitioner and respondent No.5, and having regard to the litigation generated by the petitioner, respondent No.1-Government of Andhra Pradesh, shall re-examine the whole issue once again, and consider the desirability or otherwise of continuing the two officers, namely the petitioner and respondent No.5 on deputation in Municipal Corporation of Hyderabad, and if so desires, it shall consider, which of the two officers, whether the petitioner or respondent No.5, should be continued, and if not, whether they should be recalled and any other suitable officers posted in their place, and take appropriate decision in the matter, within a period of four weeks from the date of receipt of a copy of this order. Till such time, *status quo* obtaining as on today shall be maintained.

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N.V. RAMANA, J.

Date: 28th April, 2006.

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